IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

HONEYWELL INTERNATIONAL INC., et al., *Plaintiffs*, v. APPLE COMPUTER INC., et al., *Defendants*.	C.A. No. 04-1338 (KAJ)

DEFENDANTS OLYMPUS CORPORATION AND OLYMPUS AMERICA INC.'S REPLY TO HONEYWELL'S CONSOLIDATED BRIEF [D.I. 167] IN RESPONSE TO OLYMPUS' MOTION TO STAY [D.I. 161]

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Dated: May 4, 2005

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ARGUMENT

As a pure LCD customer, Olympus' case should be stayed. Honeywell's attempt to distinguish the facts present in *Commissariat A L'Energie Atomique v. Fujitsu Limited*, No. 03-484-KAJ, 2004 WL 1554382, at *3 (D. Del. May 13, 2004) ("the CEA case") from the present case misses the point. *See* Ex. C.[1]

First, Honeywell states that unlike the *CEA* case, where both LCD suppliers and LCD customers were sued, Honeywell has *decided* to focus on LCD customers. D.I. 167, page 7. In truth, Honeywell has not focused only on customers. Honeywell has already sued (or settled with) Olympus' suppliers, including Casio Computer Co., Ltd., Sanyo Electronic Co., Ltd., Seiko Epson Corporation, Sharp Corporation, and Sony Corporation. *See* Declaration of Yoshimitsu Enomoto ("Enomoto Decl.") at ¶ 6, Ex. A and Declaration of Kathleen Cairney ("Cairney Decl.") at ¶ 4, Ex. B. Moreover, any attempt to distinguish *CEA* from this case by citing Honeywell's sheer will to target LCD-customers ignores the logic of *CEA*. Regardless of Honeywell's personal reasons to proceed only against particular parties, the fact remains that the LCD suppliers are the only parties who are in a position to litigate this case in an efficient and manageable way.

Second, Honeywell attempts to distinguish *CEA* on the basis of the subject matter of the patents. Honeywell suggests that whereas the *CEA* patent claims "relate to the inner workings of the [LCD] cell itself," the '371 patent asserted by Honeywell does not. This is simply not true. The '371 patent is specifically directed to and claims an internal structure of an LCD itself. Ex. D. In fact, Honeywell's first set of discovery requests just served on Olympus asks for

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1 References to "Ex. ___" herein are to the exhibits to Olympus' Opening Brief (D.I. 163).

information on the inner workings of the LCD modules contained in Olympus' products. *See, e.g.*, Ex. F (Plaintiffs' First Set of Requests for Admissions to Defendant Olympus Corporation) *and* Ex. G (Plaintiffs' First Set of Interrogatories to Defendant Olympus Corporation, Nos. 2 and 3 in particular). There are no claims in the '371 patent directed to other electronic products, such as digital cameras, which may incorporate an LCD, and no such products are even mentioned anywhere in the specification of the '371 patent. Ex. D. Honeywell focuses on the alleged advantages of the LCD construction described in the '371 patent as eliminating an interference pattern called the "Moire effect", however the absence of a "Moire effect" from an LCD is not recited in any claim of the '371 patent, and the absence of a Moire effect from an LCD panel does not mean that such a panel infringes the '371 patent.

For the same reasons the Court stayed the *CEA* case with respect to the pure customers, Honeywell's case against Olympus should be stayed.

I. STAYING THE CASE AS TO OLYMPUS, A PURE LCD CUSTOMER, WOULD SIMPLIFY THE LITIGATION REGARDLESS OF THE OUTCOME OF THE CASE WITH RESPECT TO THE LCD MANUFACTURERS

Honeywell never disputes the obvious fact that staying this action as to Olympus would streamline an otherwise unduly complex multi-party action, no matter what the outcome. Honeywell does not dispute that if the '371 patent is ultimately found invalid, unenforceable, or not infringed by the LCDs sold to Olympus by the LCD manufacturer parties, Honeywell's claim against Olympus is moot. Honeywell does not dispute that if it eventually prevails on its claim resulting in a judgment of infringement against the LCD manufacturers, satisfaction of that judgment by the manufacturers would also render Honeywell's claim against Olympus moot. Nor does Honeywell dispute that any settlements between Honeywell and Olympus' LCD suppliers would also moot Honeywell's claim against Olympus to the extent that the claim is

based on LCDs manufactured by those suppliers.[2]

Furthermore, Honeywell concedes that the "LCD suppliers better understand their products" when compared to their customers. D.I. 167, page 10. This is exactly Olympus' argument, namely, it is the LCD manufacturers, not the customers, who possess knowledge of the design and operation of the accused LCD modules, and hence the LCD manufacturers are the only parties possessing the technical information which bears on Honeywell's infringement claim. *See Commissariat*, 2004 WL 1554382, at *3. Honeywell never disputes that Olympus does not make or design LCD modules and has no useful information whatsoever on the subject. Enomoto Decl. ¶ 7, Ex. A. In spite of this, Honeywell's first set of discovery requests specifically asks for information not within the possession of Olympus, including for example, whether the LCDs of Olympus' products contain a "lens array" and, if so, whether there are two lens arrays and whether at least one is "rotated." *See* Ex. G (Interrogatories Nos. 2 and 3). Olympus is simply not in the same position as the LCD manufacturers to answer these questions.[3]

II. HONEYWELL CANNOT BE PREJUDICED SINCE OLYMPUS' LCD SUPPLIERS ARE ALREADY PARTIES TO THE SUIT, HAVE INTERVENED, OR HAVE SETTLED OUT

Honeywell speculates several hypothetical situations in which it could suffer prejudice by

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2 Honeywell downplays the fact that several suppliers, including Sharp Corporation ("Sharp"), have already settled. D.I. 167, pages 9-10. But any strategic motive for attempting to settle with manufacturers while pushing litigation against customers does not negate the fact that Honeywell is barred from double-recovery.

3 Honeywell suggests that Olympus had "enough information to defend against Honeywell's allegations, as evidenced by their formal denial of Honeywell's infringement allegations" in its Answer. D.I. 167, page 2 and 10. However, Olympus' Answer is properly based upon information and belief, and it does not follow that Olympus possesses the kind of specific, detailed information on the construction of the LCDs which only the LCD manufacturers themselves would be expected to have.

staying the action as to pure customers like Olympus. These speculations are without merit.

A. Honeywell Entirely Ignores the Fact that Olympus' Suppliers Are Already Involved in this Litigation.

Honeywell lists eleven (11) manufacturers of LCDs who allegedly supply LCDs to named defendants in this case, and who themselves are not presently in the litigation. Honeywell then concludes that "it would significantly delay this case if Honeywell would have to repeat service of process on these additional companies." D. I. 167, page 12. Honeywell's list is both deceptive and irrelevant to Olympus' motion to stay. This list conspicuously leaves out Casio Computer Co., Ltd., Sanyo Electric Co., Ltd., Sharp Corporation, and Sony Corporation, each of whom is a defendant in this lawsuit (Sanyo, Sony, and Casio), or has settled its dispute with Honeywell by license agreement (Sharp). Honeywell's decision to focus on non-party suppliers is deceptive and does not address the fact that Olympus' suppliers are already involved.

B. Honeywell's Assertion that It Needs Customer-Specific Information Is Unfounded.

Honeywell argues that it needs to determine not just whether certain LCD-containing products contain infringing LCDs, but it needs to discover "how they [i.e., the end product] will be marketed." D.I. 167, page 8. Honeywell also suggests that it needs to take discovery on how Olympus "actively design, manufacture, market and sell the end products." D.I. 167, page 9 (emphasis added). Honeywell's overt effort to obtain marketing and design information from LCD customers for end products, which merely incorporate an LCD as a minor component, is the beginning of Honeywell's transparent campaign to tie any damages determination in this case to the more expensive end product, rather than to the LCD itself (to which the '371 patent is specifically directed). Honeywell's efforts are misguided for several reasons.

First, Honeywell plays a game of semantics by referring to LCD customers as "manufacturers." The only sense in which Olympus is a manufacturer is that it makes digital

cameras. But the claims of the '371 patent are indisputably directed to a liquid crystal display apparatus, and nowhere refer to digital cameras or other electronic products.

Second, Honeywell is not even entitled to base any claim for damages on the sales price of digital cameras. The '371 patent only claims an LCD. An LCD is only one of many, many components of a digital camera, and the primary basis for consumer demand for digital cameras is its ability to capture high-quality images. *See, e.g., Izumi Products Company v. Konikklijke Philips Electronics N.V.*, 315 F.Supp.2d 589 (D. Del. 2004) (denying recovery of lost profits damages to patentee based on entire value of defendant's infringing sales, to extent that such sales infringed only claim for cutter component and not entire electric razor, absent showing that component was basis for customer demand).

Third, by focusing only on damages, Honeywell ignores the fact that the LCD-customers need not play a role in any liability determination, i.e., any invalidity, unenforceability, or non-infringement determination. Furthermore, there are pending bifurcation motions, (*see Toshiba's Fed. R. Civ. P. 42(b) Motion for Bifurcation of Liability and Damages* [D.I. 164] and *Defendant Fuji Photo Film Co., Ltd.'s Motion in Support of Toshiba's Motion* [D.I. 166]) asking the Court to bifurcate the case between liability and damages. In view of Honeywell's speculation that pure LCD-customers could at most be relevant to damages, bifurcation also makes particularly sound sense.

Fourth, Honeywell tries to distinguish cases heeding the customer-suit exception by defining customers as retail stores who simply resell (without alteration) the product provided by the supplier. D.I. 167, page 9. Notably, Honeywell ignores *CEA*, the case most common to the present. Contrary to Honeywell's attestations, the "customers" in CEA incorporated LCDs from a supplier, just like the present case. Furthermore, in *Ricoh Company, Ltd. v. Aerolfex Inc.*, the

patent in suit was directed to a software program used to design integrated circuits and the plaintiff-patentee sued both the designer of the software and the customers who used the software. 279 F. Supp.2d 554, 558 (D. Del. 2003). The fact that the customers used the software in designing and manufacturing integrated circuits did not stop the Court from recognizing that under the customer exception rule, "it is more efficient for the dispute to be settled directly between the parties in interest." *Id.* at 557. The Court noted that "Ricoh's infringement claims against the defendants are fundamentally claims against the ordinary use of Synopsys' Design Compiler." *Id.*, at 558.

Honeywell's speculations that it will be prejudiced are either irrelevant or simply smoke.

CONCLUSION

For the foregoing reasons, Olympus respectfully requests the case against it be stayed.

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CERTIFICATE OF SERVICE

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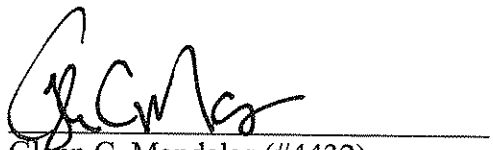

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